

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of	)	
	)	
Acceleration of Broadband Deployment	)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost of	)	
Broadband Deployment by Improving Policies	)	
Regarding Public Rights of Way and Wireless	)	
Facilities Siting	)	

**COMMENTS OF THE CITY OF ONTARIO**

The City of Ontario files these comments in response to the Notice of Inquiry (“NOI”), released April 7, 2011, in the above-entitled proceeding. Through these comments, The City of Ontario seeks to provide the Commission with basic information regarding its local right-of-way and facility management practices and charges.<sup>1</sup> The Commission should not interfere with these local policies. The City of Ontario has developed considerable expertise applying its policies to protect and further public safety, economic development, and other substantial community interests. By adopting rules in this area, the Commission could disrupt this process at substantial cost to local taxpayers and to the local economy. We believe that a basic respect for federalism, a fair reading of the Constitution and the Communications Act, and an honest assessment of the Commission’s limited expertise of local land use matters all point to the same conclusion: this is no place for federal regulation.

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<sup>1</sup> We use the term “charges” to include both any cost recovery that is part of right-of-way and facility management (such as permitting fees), as well as other compensation we may receive from communications companies for use of the rights-of-way and other facilities consistent with state and local law.

The City of Ontario has successfully managed its right of way to encourage deployment of several broadband networks within our jurisdiction. As a result, one or more broadband services are available to 100% of the households in our jurisdiction. There is no evidence that our policies or charges with respect to placement of facilities in the rights-of-way or on City property have discouraged broadband deployment. In fact, we have explored many ideas, including a municipally owned infrastructure to encourage broadband and competition. Our community *welcomes* broadband deployment, and our policies allow us to work with any company willing to provide service. We are unaware of any company that has cited our policies as a reason that it will not provide service to the community. We believe our policies have helped to *avoid* problems and delays in broadband deployment by ensuring that broadband deployment goes smoothly for both the providers who follow the rules and the larger community. On the other hand, we also know that many incumbent providers and other entities seeking access to our rights-of-way and facilities would prefer to live without rules or regulations, to the great detriment of other users, abutting landowners, commuters, and the general taxpayer.

Our policies, as described in The Ontario Plan (General Plan) and the Development Code, all speak to creating a sustained community-wide prosperity which continuously adds value and yields benefits for those who live and work here as well as for those who invest here. “Our goal is to create, maintain and grow economic value and we do our job by providing infrastructure and services” (*The Ontario Plan*). One way in which we do this is by committing to being business friendly and by protecting the value of property for those who have already invested here. We embrace new development and new technological change with confidence and a sense of opportunity while ensuring the greater community that this new growth and

development will not sacrifice what we have accomplished in the past and that it will add value and net gain to the community. Specifically, we want to ensure that our resident and business communities have all the latest technological communication services available to them while requiring that infrastructure to be aesthetically pleasing and in context with the community character. To allow unregulated development within our City, whether it be on private or public property, would be counterproductive to the City's Vision and General Plan principles and policies and would negatively affect the economic gains we have achieved over the past decade. We think it is better to strike a balance between the needs of a growing communication industry and the needs of the local community so that one does not unnecessarily hinder the other.

Since 2001, when our Development Code was amended to include regulations pertaining to "Antennas and Wireless Communication Facilities", we have entitled (approved) over 87 cell sites with no denials and no appeals. Today, we have over 121 cell sites in our City and are working with the service providers to add more sites in the future.

In response to the NOI, The City of Ontario provides the following information:

**I. *Application Procedures, Forms, Substantive Requirements, and Charges.***

The Commission asks whether all necessary application procedures, forms, substantive requirements, and charges are readily available.<sup>2</sup>

The City of Ontario applies the following right-of-way management and facility placement procedures. An encroachment permit is required whenever work is proposed within the City's right-of-way or easement. Encroachment permit requirements and procedures can be found in the Ontario Municipal Code, which is available online at

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<sup>2</sup> NOI ¶ 14.

<http://www.ci.ontario.ca.us/index.cfm/33992>. The encroachment permit application form and other related documents can be downloaded from the City website at <http://www.ci.ontario.ca.us/index.cfm/26842>. The Applicant can submit the application to the City in person or via fax or email. A Project Engineer will be assigned to each project and will be the sole point of contact for inquiries concerning the permit.

In 2000, the City of Ontario experienced a new wave of requests for developing wireless telecommunication facilities. At the time, the requirements for approving cell sites were inconsistent and unclear. At the direction of the Ontario Planning Commission and with the assistance of industry providers, the City collaboratively created a new development code section dealing with the review and approval of these facilities. Today, wireless telecommunication facilities are subject to a three tier entitlement review process, based on where they are proposed to be located in the City.

Tier 1 entitlement is for sites that are in a commercial or industrial zone and the equipment is either integrated into the design of a building or structure or is mounted on a roof that is screened from view. These projects are reviewed only through the plan check process (staff review).

Tier 2 entitlement is for commercial and industrial sites that meet all other City codes, are at least 500 feet from residentially zoned property and the antennas are of a stealth design or are co-located on a previously approved site. These projects would go through a review process and an entitlement hearing before a staff committee.

Tier 3 entitlement is for all other projects that do not meet the criteria established in Tier 1 or Tier 2, including all antenna in a residential zone, non-stealth freestanding antennas, and antennas that do not meet code requirements (i.e.: height restrictions, setback requirements, etc.).

These entitlement projects require a Conditional Use Permit and are processed before the Planning Commission.

The standards for Wireless Communication Facilities are found in Development Code Section 9-1.3289. The Development Code can be found on-line at [www.ci.ontario.ca.us/index.cfm/22824](http://www.ci.ontario.ca.us/index.cfm/22824) . In addition, the General Plan for the City, referred to as The Ontario Plan can be viewed at [www.ontarioplan.org](http://www.ontarioplan.org) .

## **II. *Sources of Delays.***

The Commission asks what factors are chiefly responsible to the extent applications are not processed in a timely fashion. The Commission also asks about errors or omissions in applications.<sup>3</sup>

In The City of Ontario, most applications are processed very quickly. The review time for a typical broadband facility construction application is three weeks for the first check and two weeks for all subsequent checks. In order to expedite the application review, City staff will meet with the Applicant to explain City's requirements during the review process. If any issue arises during the review process, the City's Project Manager will meet with the Applicant to review different alternatives so that the issue can be resolved promptly.

Most plan checks for Tier 1 entitlement projects take approximately 30 days. This accounts for two plan check reviews by city staff and the original submittal and one plan check correction by the applicant. The City guarantees plan check turn-around of two weeks or less. Delays are routinely caused by the applicant (Provider) or their construction manager not returning plan check corrections in a timely manner.

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<sup>3</sup> *Id.*

Tier 2 and 3 entitlement projects require more detailed review and public input and those applications can take up to 90 days to process before the appropriate hearing body. In California, entitlement projects (discretionary actions) must be reviewed for environmental impacts pursuant to CEQA which requires certain processing timeframes that are part of the reason for the process taking 90 days.

Besides CEQA, the City is responsible for analyzing the impact of wireless communication facilities have on other issues in the City. We are responsible for ensuring compliance with the Airport Land Use Compatibility Plan (ALUCP) for the Ontario International Airport. We must review all proposed new construction in areas around the airport to ensure buildings, structures, poles, etc. do not exceed the maximum height limit, or else use of the airport may be restricted. Construction that is above certain height restrictions would have to be reviewed by the FAA.

Another area that is of a concern with wireless facilities is in our Historic Districts which are located in the historic downtown of the City. We are a Certified Local Government (CLG) and with that certification by the State we are required to adopt and implement policies and standards regulating development and construction that would potentially impact the historic nature of these areas. The City, local residents, and businesses have spent millions of dollars protecting and enhancing the rich, historic nature of the downtown. Euclid Avenue itself is on the National Register of Historic Places and must be protected from encroachment of visually intrusive objects such as towers, poles, and structures that are not sensitive to the design and character of the downtown. Besides the Development Code, Ontario has adopted 30 Specific Plans which are individually adopted, development codes for areas of special interest to the City. As such, compliance with zoning laws of the City is not a simple task and includes having to

have knowledge of many sources of information and being able to apply that information correctly. The City has a legitimate, substantial interest in reviewing, coordinating, approving, and inspecting construction projects in our community.

### **III. *Improvements.***

The Commission asks whether there are particular practices that can improve processing.<sup>4</sup>

The City of Ontario is an organization that is constantly evaluating our service delivery and looking for opportunities to improve permit and entitlement processing. To that end, we utilize many practices that make our processes efficient and business friendly. We have an experienced, well trained and business friendly staff prepared to assist with all types of development requests. We have time tested and proven ordinances that are designed for successful project completion and to protect the community against conflicts and problems. We encourage “single dig, joint trench” construction for cost savings and to limit disruptions in the right of way. We host coordination meetings for such practices with costs savings and positive project results. We offer e-government service deliver via web and phone with more features being made available as technology changes. We have local leaders that are in touch with the issues unique to this jurisdiction and relevant to the local population.

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<sup>4</sup> NOI ¶¶ 14, 29.

#### IV. *Permitting Charges.*

The Commission seeks data “on current permitting charges, including all recurring and non-recurring charges, as well as any application, administrative, or processing fees.” Specifically, the Commission asks commenters to identify:

- the type of facilities for which such charges are assessed;
- how such charges are structured (e.g., per foot or percent of revenue in the case of rights of way fees);
- whether the community is subject to comprehensive state franchising or rights-of way-laws;
- whether the charges are published in advance or individually negotiated, designed to approximate market rates or merely recover costs (direct and/or indirect), and accompanied by comprehensive terms, and conditions; and
- the value of any in-kind contributions required for access or permit approval.

The Commission further asks whether such charges are related to impacts on the local community, such as pavement restoration costs for projects that involve trenching in roadways.<sup>5</sup>

In the City of Ontario, the encroachment permit fees, which include \$85 for processing, \$115 for reviewing traffic control, and plan check and inspection fees, are required for any work within the City’s right-of-way. The plan check and inspection fees are determined based on 6% and 5.97% of the estimated improvement costs, which cover only those items that will affect the safety of motorists and pedestrians. Those items include trench repair, trench backfill, and pavement removal.

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<sup>5</sup> NOI ¶ 17.

In California, fees for processing entitlement applications and plan checks must not exceed the actual cost of providing the service. The cost of processing a Tier 1 project is approximately \$1,500, a Tier 2 is approximately \$6,000 and for a Tier 3 approximately \$9,000. Less than half of all applications require a CUP before the Planning Commission, so the cost is minimal and the timeframe is short for most projects.

**V. *Local Policy Objectives.***

The Commission asks what “policy goals and other objectives” underlie the local practices and charges in this area.<sup>6</sup>

Below are excerpts from The Ontario Plan:

- Invest in the Growth and Evolution of the City's Economy
- Maintain the Current High Level of Public Safety
- Invest in the City's Infrastructure (Water, Streets, Sewers, Parks, Storm Drains and Public Facilities)
- Encourage, Provide or Support Enhanced Recreational, Educational, Cultural and Healthy City Programs, Policies and Activities
- Ensure the Development of a Well Planned, Balanced, and Self-Sustaining Community
- Designate the distribution, location and balance of land uses.
- Ensure compatibility between land uses.

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<sup>6</sup> NOI ¶ 22.

We maintain clear development standards. We work collaboratively with all stakeholders to ensure a high degree of certainty in the efficient review and timely processing of all development plans and permits. We provide easy access to information for developers, builders and the public about design quality, construction quality, and sustainable building practices. We require infrastructure to be aesthetically pleasing and in context with the community character. We require development in transitional areas to protect the quality of life of current residents.

- Avoid conflicts with existing and planned future City infrastructure – The City is responsible for protecting existing infrastructure from being damaged. Accordingly, the City has to review all proposed work within the City's right-of-way. The City is also responsible for planning the future locations of City's infrastructure such as water, recycled water, sewer, storm drain, fiber optic, and street lights. The City needs to review the placement of the proposed broadband facilities to make sure those facilities don't interfere with the planned infrastructure identified in the master plans/General Plan.
- Allow the orderly development of the City – The Ontario's municipal code requires new developments to underground existing overhead utilities (cable TV, electrical lines less than 34.5KV, telephone and other energy or communication devices) fronting the site. The Undergrounding Ordinance supports the implementation of the General Plan policies to achieve a high quality community and improve aesthetics and public health and safety along major streets. New poles will create aesthetic and utility clearance concerns to those projects who have already undergrounded and those who will be undergrounded in the future.

- Promote beautification and protect community value – Overhead utilities interfere with both streetscapes and landscapes and cause the decrease in the value of the community. In addition, the City has decorative street lights in various locations. The cell antenna, which may be attached to street light poles, will create aesthetic concerns to the residents.
- Ensure public safety – Local jurisdictions must be able to conduct compatibility and collocation evaluations. For example, if a cell antenna is attached to a traffic signal pole, the traffic signal equipment might be disturbed during future maintenance. This can cause the malfunction of a traffic signal or a change in signal timing, which will become a potential safety hazard and create liability issues for the City.

## VI. *Possible Commission Actions.*

Finally, the Commission asks what actions the Commission might take in this area.<sup>7</sup> As noted above, The City of Ontario strongly urges the FCC to refrain from regulating local right-of-way management and facility placement processes. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. These matters are managed by local staffs with considerable expertise. Imposing a federal regulatory regime would create unnecessary costs for our community, and it would have the potential to undermine important local policies. Likewise, Commission regulation of charges for use of the rights-of-way could have significant impacts on the community, and may

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<sup>7</sup> NOI ¶ 36.

actually make it infeasible to continue to maintain or provide important public services. If the Commission feels compelled to act in this area at all, it should limit itself to voluntary programs and educational activities, and to implementing its own recommendations in the National Broadband Plan for working cooperatively with state and local governments.

## **CONCLUSION**

We look forward to following the Federal lead and in being partners in the process of implementing competitive entry, open access, E-government and cyber security. We support ideas that improve time to market, expedite resolution of disputes, dig once, and right of way best practices to the extent that it is not detrimental to local concerns and objectives.

We concur with the stated goals and direction of the National Broadband Plan, in particular the goal to “ensure efficient allocation and management of assets governments control or influence, such as spectrum, poles, and rights of way, to encourage network upgrades and competitive entry.” However, we are concerned with any potential policies, orders or rules that would adversely impact a local government’s ability to manage local rights of way and local fact-specific matters.

We are hopeful for clear Federal policy that supports local government entities providing broadband infrastructure and services on a fair and impartial basis to deliver broadband to as many people as possible with as many offerings as possible. In fact, we have plans for a municipal fiber infrastructure and have applied for grant funding in support of that project, only to find that priority had been given to areas with less population and certainly less impact than could have been achieved in our jurisdiction.

The City of Ontario urges the Commission to conclude that right-of-way and facility management and charges are not impeding broadband deployment. In our experience, we find

that incumbent providers have a considerable amount of leverage and influence in when and where broadband is deployed. Current incumbent privileges do not support equal access to customers or a level playing field but rather it is slanted toward those with existing infrastructure (many times obtained with federal backing or subsidies over many years).

As noted above, our local policies and procedures are designed to promote and protect relevant substantial local interests, and we have done so since our founding in 1891. As you can see from the information provided, there is no evidence that the policies have impaired any company from providing broadband service in our jurisdiction, but we do have concerns that federal regulations may prove costly and disruptive to our community.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'CH' or 'Hughes' in a stylized, cursive script.

By: Chris Hughes, City Manager  
City of Ontario  
303 East B Street  
Ontario, CA 91764

cc: National League of Cities, [Bonavita@nlc.org](mailto:Bonavita@nlc.org)  
National Association of Counties, [jarnold@naco.org](mailto:jarnold@naco.org)  
NATOA, [straylor@natoa.org](mailto:straylor@natoa.org)  
The United States Conference of Mayors, [rthaniel@usmayors.org](mailto:rthaniel@usmayors.org)